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COURT OF APPEALS  
DIVISION II

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Cause No. 54704-0-II

STATE OF WASHINGTON

WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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CITY OF LONGVIEW POLICE DEPARTMENT

RESPONDENT

-V-

SIDNEY A. POTTS

APPELLANT

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APPEAL FROM THE SUPERIOR COURT OF WASHINGTON

COURT OF THE HONORABLE MICHEAL EVANS

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REPLY BRIEF

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Pro se filing by;  
Sidney A. Potts #626771  
MCC/WSR C-309 L  
Monroe, Washington  
98272

## TABLE OF CONTENT

### STATE CASES

<u>Allstate v Khani</u> , 75 Wn.App. 317, 877 P.2d 724 (1994).....	pg.9,12
<u>Bill Morris v Palouse River and Coulee City Railroad</u> , 149 Wn.App. 366, 203 P.3d 1069 (2009) .....	pg.5
<u>Brickum Inv. Co. v Vernham Corp.</u> , 46 Wn.App. 517, 731 P.2d 533 (1987) .....	pg.12
<u>Bruett v Real Property known as 18328 11th Ave. N.E.</u> , 93 Wn.App. 290, 968 P.2d 917 (1998) .....	pg.3,5
<u>Columbia Valley Credit Exchange Inc. v Bryon Lampson</u> , 12 Wn.App. 952, 533 P.2d 152 (1975) .....	pg.12,23
<u>City of Walla Walla v \$401,333.44</u> , 164 Wn.App. 236, 262 P.3d 1239 (2011) .....	pg.3,18
<u>Espinoza v City of Everett</u> , 87 Wn.App. 857, 943 P.2d 387 (1997) .....	pg.3,18
<u>Farmer v Davis</u> , 115 Wn.App. 661, 63 P.3d 821 (2003) .....	pg.11
<u>France-v Freeze</u> , 4 Wn.2d 120, 102 P.2d 272 (1940) .....	pg.4
<u>Grady v Dashiell</u> , 24 Wn.2d 272, 163 P.2d 222 (1940) .....	pg.4
<u>Hamilton v Johnson</u> , 137 Wash. 92 (1925) .....	pg.12
<u>In re Marriage of Leslie</u> , 112 Wn.2d 612, 772 P.2d 1013 (1989) .....	pg.9,12
<u>In re Ortiz</u> , 108 Wn.2d 643, 649, 740 P.2d 843 (1987) .....	pg.8
<u>In re Personal Restraint of Leslie</u> , 115 Wn.App. 517, (2003) .....	pg.11
<u>John Hancock Mutual Life Insurance Co. v Gooly</u> , 196 Wash. 357, at 370 (1938) .....	pg.9
<u>King v Snohomish County</u> , 140 Wn.2d 420, 424, 47 P.3d 563 (2002) .....	pg.8,10

<u>Leen v Desmopolis</u> , 62 Wn.App. 473, 815 P.2d 269 (1991); review denied, 118 Wn.2d 1022, 827 P.2d 1393 (1992) .....	Pg.12
<u>Lindgren v Lindgren</u> , 58 Wn.App. 588, 74 P.2d 526 (1990); review denied, 116 Wn.2d 1009, 805 P.3d 813 (1991) .....	pg.9,10
<u>Long v Harrold</u> , 76 Wn.App. 317, 319, 884 P.2d 934 (1994) .....	pg.8
<u>Mueller v Miller</u> , 82 Wn.App. 236 at 251, 917 P.2d 604 (1996); quoting <u>Mitchell v Kitsap County</u> , 59 Wn.App. 177 at 180-181, 797 P.2d 516 (1990) .....	pg.12
<u>Northern Commercial Co. v E.J. Harmon Co. Inc.</u> , 22 Wn.App. 963, 593 P.2d 1332 (1979) .....	pg.5
<u>Scanlan v Townsend</u> , 181 Wn.2d 838, at 847, 336 P.3d 1155 (2014) .....	pg.6
<u>Schillenberger v Everett District Court</u> , 90 Wn.2d 794, 585 P.2d 1177 (1978) .....	pg.14
<u>Snohomish Regional Task Force v Real Property known as 20803 Poplar Way, Lynwood, Washington</u> , 150 Wn.App. 387, 208 P.3d 1189 (2009) .....	pg.15
<u>State ex rel. Patchett v Superior Court of Franklin County</u> , 60 Wn.2d 784, 375 P.2d 747 (1962) .....	pg.4
<u>State v McWilliams</u> , 177 Wn.App. 139, 311 P.2d 584 .....	pg.13,15,18
<u>Sturgis v Dart</u> , 23 Wash. 244, 62 P. 858 (1900) .....	pg.9
<u>Tellevik v 31641 W. Rutherford St.</u> , 125 Wn.2d 364, 844 P.2d 1319 (1994) .....	pg.19,23

#### FEDERAL CASES

<u>Vanderbilt v Vanderbilt</u> , 344 U.S. 416, 418, 77 S.Ct. 1360, 1 L.Ed.2d 1456 (1957) .....	pg.8
<u>Warden v Hayden</u> , 387 U.S. 294, 307-308, 18 L.ed.2d 782, 87 S.Ct. 1642 .....	pg.13,15,18

CIVIL RULE

CR 12(b) .....	pg.9,10
CR 12(g) .....	pg.10
CR 24(a) .....	pg.16
CR 60(b)(5) .....	pg.2,8,9,12

STATE STATUTE

RCW 4.16.170 .....	pg.12
RCW 34.05.428 .....	pg.16
RCW 34.05.434(1) .....	pg.2,11,12,14,15
RCW 34.05.476(3) .....	pg.3
RCW 34.05.558 .....	pg.3
RCW 34.05.530 .....	pg.16
RCW 69.50.505 .....	pg.3,20,21
RCW 69.50.505(5) .....	pg.8,9,10,11,15,22
RCW 69.50.505(8)(h) .....	pg.8

ASSIGNMENT OF ERROR AND ARGUMENT

- I. Contrary to the Agency's implications, Potts was not provided with Notice any time prior to the December 19, 2013 Hearing, and Superior Court abused its discretion in denying Appellants CR 60(b)(5) Motion to Vacate..... pg.2
- A. The Agency's authority to hold the contested December 19, 2013 Forfeiture Hearing was purely statutory, and the Agency's failure to comply with RCW 34.05.434(1)'s requirement of Notice seven days prior to Hearing, has foreclosed any acquisition of statutory authority or subject matter jurisdiction to adjudicate the contested Forfeiture Proceedings, or to reach final judgement and enter an Order of Forfeiture..... pg.2

- B. The Agency failed to cure the statutory violation of Notice, raising the presumption that it never attempted to serve Notice on Potts prior to the December 19, 2013 Forfeiture Hearing..... pg.5
- C. The Agency's claim that res judicata and collateral estoppel apply in the context of issues raised by Appellant, is meritless, and should be rejected out-right..... pg.7
- D. Appellant did not receive service of Notice, and the Doctrine of Waiver does not apply here..... pg.8
- E. Appellant met his burden by proving that the Agency failed to provide service of process as required under RCW 34.05.434(1), and accordingly, the January 19, 2013 Administrative Order of Forfeiture must be Vacated in its entirety..... pg.11
- II. Potts Family Motors was legally entitled to Notice of the impending Forfeiture Hearing, no later than seven days prior to the December 19, 2013 Hearing Date..... pg.13
- III. Potts Family Motors Incorporated became a party to this proceeding when it served written notice on the Agency's Hearing Officer that, PFM had an ownership interest and lawful right to possess all property seized from its main business location on August 10, 2012, and requested return of the lawfully possessed property. RCW 69.50.505. .... pg.15
- IV. In the face of overwhelming evidence the Agency does not deny claims made by Appellant in the Supplemental Notice of Appeal, and Motion for Decision of the Merit, and Superior erred in denying the relief requested..... pg.16
- V. Superior Courts Denial of the Request to Vacate the Administrative Order of Forfeiture in relation to property seized from Potts Family Motors at 411 Oregon Way on August 10, 2012 is in direct conflict with Supreme Court precedent established in Tellevis. .... pg.17

VI. Superior Court erred in denying Appellants request for Return of the Unlawfully seized Red Canoe Account, where The Agency does not deny the account was unlawfully seized, and illegal seizure under the law of this specific case, required Superior Court to Order the Return of Appellants account. Opinion No 48410-2-II..... pg.20

VII. Superior Court erred in denying Appellants claim of unlawful seizure of the Fiber Federal Accounts, prior to judicial review of the pending Motion for Discovery..... pg.22

Statement of the Case ..... pg.1

Argument ..... pg.2

Conclusion ..... pg.22

#### APPENDIX

Exhibit A - Forfeiture Proceedings for Robert Ross.

Exhibit B - Forfeiture proceedings for Brandi Fjel.

## STATEMENT OF THE CASE

Potts agrees with the City's statement of fact where it is supported by claims verifiable in the record. But vigorously disputes all of the city's claimed statement of fact which are half-truths or outright fabrications, presented to muddy the waters and deceive the Court.

For example, the Agency blatantly claims in its statement of fact, that; " Potts was provided with Notice of the Forfeiture Hearing." This is a partial truth and is only true in relation to the expired Notice of Hearing for April 2013.

Specifically, neither Potts or Potts Family Motors Inc. were served Notice of Hearing anytime prior to the December 19, 2013 Forfeiture Hearing. ( See Declaration and Affidavit, CP #156, pgs. 391-393).

Potts agrees with the Agency that Potts's appeal has been dismissed and reversed twice, by reasonable unbiased jurists, for frivolous claims presented by the City.

Once again Superior Court granted a dismissal of Potts appeal for reasoning not supported in any manner by fact or law.

Potts is not casting aspersions on the integrity of Superior Court, however it becomes increasingly apparent that Potts is not being afforded an even playing field for the proceedings at hand.

Further, this Court should be growing weary of wasting its time and resources to afford Appellant the neutrality and detachment

guaranteed by Judicial Rule, and Rule of Professional Conduct under the Laws and Constitution of the State of Washington and the United States, especially where it is being made to appear that the City and Superior Court are presuming on the integrity of this Court to support the meritless ruling from below, which flies in the face of long and well settled precedent of the Supreme Court of The State of Washington.

ASSIGNMENT OF ERROR  
AND SUPPORTING ARGUMENT

- I. Contrary to the Agency's implication, Potts was not provided with Notice any time prior to the December 19, 2013 Forfeiture Hearing, and Superior Court abused its discretion in denying Appellants CR 60 Motion to Vacate.

The Agency implies in many places that Potts recieved Notice more than seven days prior to the December 19, 2013 Forfeiture Hearing, and the Agency has somehow misplaced its proof of service.

Potts and Potts Family Motors have catagorically and specifically denied this undocumented claim (See Affidavit and Declaration, CP #156, pgs. 391-393).

- A. The Agencys authority to hold the contested December 19, 2013 Forfeiture Hearing was purely statutory, and failure to comply with RCW 34.05.434(1)'s requirement of Notice seven days prior to hearing, has forclosed any authority or jurisdiction, personam or subject matter to entertain the contested Forfeiture Hearing, or to issue the Void Order of Forfeiture.

The Power to Order Forfeiture is purely statutory. No common law of forfeiture exists in the United States

and the drug forfeiture statute provides the "exclusive mechanism for forfeiting drug dealers property." Bruett v Real Property known as 18328 11th Avenue N.E., 93 Wn.App. 290, 968 P.2d 917 (1998); " The power to order forfeiture of property associated with controlled substance violations will be denied absent strict compliance with proper forfeiture procedure." Espinoza v City of Everett, 87 Wn. App. 857, 943 P.2d 387 (1997; City of Walla Walla v \$401,333.44, 164 Wn.App. 236, 262 P.3d 1239 (2011).

RCW 34.05.558 - Judicial Review of Facts  
Confined to Record.

JUDICIAL REVIEW OF DISPUTED ISSUES OF FACT SHALL BE CONDUCTED BY THE COURT WITHOUT A JURY AND MUST BE CONFINED TO THE AGENCY RECORD FOR JUDICIAL REVIEW AS DEFINED BY THIS CHAPTER.

RCW 34.05.476(3) - Except to the extent that this chapter or another statute provides otherwise, the Agency Record constitutes the exclusive basis for Agency action in adjudicative proceedings under this chapter and for Judicial Review of adjudicative proceedings.

There may be no claim that the Agency was not aware of of its statutory obligation to Notify Potts and Potts Family Motors seven days prior to the December 19, 2013 Forfeiture Proceeding.

The Agency specifically states on the face of its expired Notice of hearing for April 2013, that; " Legal authority and jurisdiction under which said hearing is to be held is contained in RCW 69.50.505. The procedures to be followed for said hearing are contained in

RCW 34.05." (See Notice of Hearing, Exhibit H of Initial Appeal Brief, paragraph 1, lines 8-10)

Further, the expired Notice in the Agency Record indicates the Agency was well aware at all times of its obligation to serve notice seven days prior to the Dec. 19, 2013 hearing, and to maintain a copy of that notice in the agency record.

The Agency's stipulation that there is no Notice of service to Potts for the December 19, 2013 Forfeiture Hearing is fatal. Giving rise to the presumption that; the Agency never properly acquired statutory authority or subject matter jurisdiction to actually entertain or proceed to final judgment for the December 19, 2013 Forfeiture Proceeding.

It is well settled law in the State of Washington that the Agency's Order of Forfeiture, issued outside its statutory authorization, was void. State ex rel. Patchett v Superior Court of Franklin County, 60 Wn.2d 784, 375 P.2d 747 (1962); Grady v Dashiell, 24 Wn.2d 272, 163 P.2d 222 (1945); France v Freeze, 41 Wn.2d 120, 102 P.2d 272 (1940).

" There is a difference between constitutionally adequate service, and service required by statute. Beyond due process requirements, statutory service requirements must be complied with in order for the court to finally adjudicate a dispute between parties. A seizing agency

must strictly comply with the service of process requirements." Id. Bruett.

" It is a fundamental tenant of due process that until adequate notice is given, a court has no jurisdiction to proceed to judgement. A judgement entered without notice is void." Northern Commercial Co. v E.J. Herman Co. Inc., 22 Wn.App. 963, 593 P.2d 1332 (1979); and " Where a process server did not effect valid service on defendant, the judgement was void for lack of jurisdiction." Bill Morris v Palouse River and Coulee City Railroad, 149 Wn.App. 366, 203 P.3d 1069 (2009).

The Agency makes no direct claim that it actually served notice of hearing on appellant, and where the notice of service is not memorialized in the Agency Record, this court has no discretion but find that the Agency never properly acquired statutory authorization to entertain the December 19, 2013 Forfeiture Hearing, and that, the subsequent Order of Forfeiture issued on January 19, 2014 was void for lack of statutory authority, and Superior Court should have vacated the order when the lack of jurisdiction first came to light.

- B. The Agency has failed to cure the statutory violation of notice, raising the presumption that it never attempted to provide Notice to Potts seven days prior to the December 19, 2013 Forfeiture Hearing.

The Agency attempts to mislead this Court with remedies which may not be applied here. The Agency implies that sometime prior to the December 19, 2013 Forfeiture Hearing Appellant was served with proper notice. However, the Agency has provided no fact in support of this undocumented and unverifiable claim. The Agency does not name a certified process server or Agency and does not specify a time or place where the purported service of process occurred.

Superior Court apparently accepted this unsupported and meritless claim, and mentioned it in support of its denial of the Motion to Vacate.

However, in so doing, Superior Court failed to enforce the Agency's initial burden to show that service was valid. " Under Washington Law the plaintiff has the initial burden to show that service was sufficient." Scanlan v Townsend, 181 Wn.2d 838 at 847, 336 P.3d 1155 (2014). The Scanlan Court went on to specify that, " The plaintiff can establish service of process with an affidavit of service from a process server." Scanlan at 847.

The Agency should have been aware of this remedy for lack of statutory service of notice, and that failure to provide proof of service in the record, followed by a failure to cure that deficiency, by having the process server or the process server's agency file an affidavit in the record establishing a specific time and place of alleged service, again raises the presumption that the City of Longview Police Department did not even attempt to properly serve notice of the pending Forfeiture Hearing seven days prior to the

December 19, 2013 Forfeiture Hearing. Then proceeded without statutory authority or jurisdiction to issue what we now know to be the void order of forfeiture on January 19, 2014.

C. Res Judicata and Collateral Estoppel do not apply here.

Another meritless non-compelling defense raised by the Agency is that res judicata or collateral estoppel bar appellant in this matter.

The Court of Appeals has ruled that collateral estoppel does apply here in the matter of Superior Courts Ruling on illegal seizure, However, Superior Courts previous ruling, requiring application of collateral estoppel is not relative to the issues now before this Court. The unlawful seizure issue was an issue previously decided in a criminal proceeding and made effective by the Appellate Courts Ruling, in the parallel Civil Proceeding.

The Agency's argument for application of resjudicata and collateral estoppel is fatally flawed, where; all issues now before this court, except lack of notice, have been before this court with no prior ruling, since the original Judicial Notice of Fact, (CP #17, pgs 9-13), and initial Supplemental Notice of Appeal, (CP #37, pgs. 18-37).

Further, the Agency does not specify any particular issue to which the application of res judicata or collateral estoppel should be made, and without more, this Court should reject this claim as overly broad and unsupported.

D. Potts did not receive proper service of notice, and the doctrine of waiver does not apply here.

Superior Court based its Denial of the Cr 60(b)(5) Motion to Vacate on a sua sponte finding of Waiver of Appellants right to statutory service of notice. The city purports to support this ruling with argument that King v Snohomish County, 146 Wn.2d 420, 424, 47 P. 3d 563 (2002), controls in the case at bar.

Appellant provided Superior Court, and now this Court, with an overwhelming amount of statutory law cites, and Supreme Court Precedent that, a Motion to Vacate under CR 60(b)(5) for lack of statutory authority or subject matter jurisdiction is not impeded by time limitations or rules of procedure.

Yet, Superior Court has demonstrated a single minded determination and refusal to be constrained by statutory law and Supreme Court Precedent, and rendered a decision which flies in the face of all Appellate and Supreme Court established law and precedent on this issue.

" A court cannot adjudicate a personal claim or obligation with out jurisdiction over that party." Vanderbilt v Vanderbilt, 354 U.S 416, 418, 77 S.Ct. 1360, 1 L.Ed.2d 1456 (1957); " Under CR 60 (b)(5) a court may vacate a void judgement at anytime." Long v Harrold, 76 Wn.App. 317, 319, 884 P.2d 934 (1994); " A judgement entered by court lacking proper jurisdiction is void." In re Ortiz, 108 Wn.2d 643, 649, 740 P.2d 843 (1987); " The mere passage of time following entry of a default judgement which is void for lack of personal jurisdiction

does not constitute a waiver of right to challenge the judgement as void." Allstate Insurance v Khani, 75 Wn.App. 317, 877 P.2d 724 (1994); " A motion to vacate under Cr 60(b)(5) may be brought at any time after entry of judgement. Void judgements may be vacated regardless of the lapse of time. Consequently, not even the doctrine of laches bars a party from attacking a void judgement." Allstate v Khani, 75 Wn.App. 317, 877 P.2d 724 (1994); " There is no time limit for moving to vacate a Void Judgement under CR 60(b)(5)." In re Marriage of Leslie, 112 Wn.2d 612, 772 P.2d 1013 (1989); " Void judgements may be vacated irrespective of the lapse of time." John Hancock Mutual Life Insurance Co. v Gooly, 196 Wash. 357 at 370 (1938); " Vacation of judgement for lack of service shown on the record is not limited by procedure of this chapter." Sturgis v Dart, 23 Wash. 244, 62 P. 858 (1900); " A motion to vacate a void judgement under CR 60(b)(5) is timely no matter when it is brought: i.e. the passage of time cannot result in a waiver of right to challenge a void judgement." Lindgren v Lindgren, 58 Wn.App. 588, 794 P.2d 526 (1990), review denied 116 Wn.2d 1009, 805 P.2d 813 (1991).

All relevant case law found by appellant seems to mandate that a Motion to Vacate under CR 60(b)(5) may not be impeded by a procedural waiver of defense under CR 12(b). As such, Superior Courts ruling that Doctrine of Waiver may be applied to a Rule 60(b)(5) Motion to Vacate a Void Judgement is plain error in direct conflict with the well established precedent of the Supreme Court of the State of Washington.

Appellant notes that in the face of insurmountable legal precedent,

Superior Court did not compound its error by citing any authorities in support of the untenable ruling.

The City of Longview Police Department attempts to support Superior Courts untenable ruling by citing King v Snohomish County, 146 Wn.2d 420, 424, 47 P.3d 563 (2002), as proof that a CR 60(b)(5) Motion to Vacate a Void Judgement is controlled by CR 12(g)'s Doctrine of Waiver as decided by the King Court.

The King Court ruled that ; " A defendant may waive an affirmative defense under CR 12(b) if either; (1) assertion of the defense is inconsistent with defendants prior behavior; or (2) the defendant has been dilatory in asserting the defense."

However, the King Courts holding was in relation to a defendants failure to pursue an affirmative defense under CR 12(b), and made no mention of overruling the long standing and well settled precedent that; " CR 60(b)(5) mirrors the common law by allowing void judgements to be attacked at any time: i.e., the passage of time can not result in a waiver of right to challenge a void judgement." Lindgren v Lindgren, 58 Wn.App. 588, 794 P.2d 526 (1990), review denied 116 Wn. 2d 1009, 805 P.2d 813 (1991).

In fact, the King Court specifically ruled, that; " The consolidation and waiver provisions in CR 12(g) are expressly limited to CR 12(b); King at [6], expressly rejecting Superior Courts Doctrine of Waiver application to Appellants CR 60(b)(5) Motion to Vacate.

Therefore, where the King Court specifically excludes application of Superior Courts Doctrine of Waiver theory to a CR 60(b)(5) Motion to

Vacate, this Court should vacate Superior Courts erroneous Dismissal of the CR 60(b)(5) under the Doctrine of Waiver Theory, and Vacate the January 19, 2014 Forfeiture Order in its entirety, where it is now known that the Order was issued by an Agency completely lacking statutory authority or subject matter jurisdiction.

E. Appellant has met his burden of proof that the Agency failed to serve notice as required under RCW 34.05.434 (1), and that the January 19, 2014 Order of Forfeiture must be vacated in its entirety.

" Proper service of process must comply with both constitutional and statutory requirements." Farmer v Davis, 161 Wn.App. 420, 432 250 P.3d 138 (2011).

" Parties cannot confer subject matter jurisdiction by agreement between themselves, a tribunal either has subject matter jurisdiction or it does not; if it does not, any judgement entered is void, and is in legal effect, no judgement at all." Farmer v Davis, 115 Wn.App. 661, 63 P.3d 821 (2003).

Nor may the Agency arbitrarily assume jurisdiction which it failed to acquire through proper service of notice. In re Personal Restraint of Leslie, 115 Wn.App. 517 (2003).

Appellant has provided evidence that the Agency has failed to make or properly document service of notice, and where the Agency does not deny any of these allegations, it should have been Superior Courts non-discretionary duty to vacate the void judgement. " The law requires no showing other than the fact that defendant was in fact not served with process, and the void judgement must be vacated."

Columbia Valley Credit Exchange Inc. v Bryon Larson, 12 Wn.App. 952, 533 P.2d 152 (1975).

Appellants filing of the CR 60(b)(5) Motion to Vacate, ( CP #154, pgs. 376-388), and the Affidavit in support of the CR 60 Motion, ( CP #156, pgs 391-393 ), coupled with the Agency's stipulation that the required service of notice is not documented in the record as required under RCW 34.05.434(1), RCW 69.505.050(8)(h), and where CR 5(d)(1) requires all pleadings that must be served upon parties to be filed, and RCW 4.16.170 requires a party to file a copy of the summons that was served, Superior Court acquired a non-discretionary duty to vacate the void judgement." Allstate Ins. v Khani, 75 Wn.App. 317, 877 P.2d 724 (1994); " Any judgement entered on the basis of defective service of notice is void." In re Marriage of Leslie, 112 Wn.2d 612, 772 P.2d 1013 (1989); "Courts have non-discretionary duty to vacate void judgements." Leen v Desmopolis, 62 Wn.App. 473, 815 P.2d 269 (1991); review denied, 118 Wn.2d 1022, 827 P.2d 1393 (1992); Brickum Inv. Co. v Vernham Corp., 46 Wn.App. 517, 731 P.2d 533 (1987); The Court must also vacate a void judgement on its own motion whenever the defect is apparent or comes to light." Mueller v Miller, 82 Wn.App. 236 at 251, 917 P.2d 604 (1996); quoting Mitchell v Kitsap County, 59 Wn.App. 177 at 180-181, 797 P.2d 516 (1990); Hamilton v Johnson, 137 Wash. 92 (1925).

The Agency's failure to serve notice upon Appellant seven days prior to the December 19, 2013 Forfeiture Hearing barred the Agency's acquisition of statutory authorization, and where the Court failed to properly address the void order of forfeiture which was entered

January 19, 2014 without proper jurisdiction, it abused its discretion in failing to do so.

Superior Court has shifted the responsibility to Vacate the Void Order to this Court, and now it is this courts non-discretionary duty to vacate the void Order of Forfeiture in its entirety.

II. Potts Family Motors was legally entitled under the laws of the State to notice of the impending Forfeiture Hearing, at least seven days prior to the December 19, 2013 scheduled hearing date.

The City can not deny that Potts Family Motors Incorporated held a constitutional right to return of lawfully possessed property, seized from its main place of business on August 10, 2012. " Seizure of property from a person or his residence is "prima facie" evidence of that persons entitlement to return of lawfully owned or possessed property." State v McWilliams, 177 Wn.App. 139, 311 P.2d 584; " A party from whom things are seized retains a protectable property interest in the seized items." Warden v Hayden, 387 U.S. 294, 307-308, 18 L.ed.2d 782, 87 S.Ct. 1642.

The Agency knew full well that Potts Family Motors Incorporated was a fully licensed and bonded State Corporation selling used cars at 411 Oregon Way on August 10, 2012, and as such held a legal ownership interest and right to possess every motor vehicle on its lot. ( See Potts Family Motors Incorporated papers of Incorporation, and lease agreement for 411 Oregon Way, CP #143, Exhibit D, 1 through 7, pgs. 264-297 ). The agencys claim that PFM was not entitled to notice is meritless, and should be rejected out of hand.

Further, where both Potts and Potts Family Motors claimed a valid ownership [interest] and lawful right to possess the property seized from 411 Oregon Way, and both parties were lawfully entitled to notice of hearing pursuant to RCW 34.05.434(1), any determination as to ownership and right to possession should be made by the parties involved. Not arbitrarily by the seizing agency. " Possession of personal property under a claim of right, is evidence of ownership against the whole world except the true owner." Schillenberger v Everett District Court, 90 Wn.2d 794, 585 P.2d 1177 (1978).

In his conclusions of fact and law, the hearing officer found, " The criminal trial of Potts was very publicised and took well over a year. During this time period, no one came forward or contacted the longview Police Department claiming ownership on any of the seized vehicles that was not investigated by the Longview Police Street Crimes Unit and afforded an opportunity to prove their legal ownership of the vehicle." ( CP #148, pgs. 305-305 ).

Actually several owners came forward to claim their vehicles, the Agency denied their requests for return, holding that where they had signed off on the title, they no longer retained any ownership interest. ( See Forfeiture Robert Ross, Exhibit A attached, and Forfeiture Brandi Fjell, Exhibit B, attached ).

Where the Agency had decided that by signing off on the titles the owners had released all interest to the person in possession of the vehicle and title, that made Potts Family Motors the actual owner of all the vehicles involved, where all titles were in PFM's

office, and the vehicles were in possession of PFM behind closed and locked gates.

Where there are no other claimants, except Potts and PFM, under the Agency's definition of ownership, PFM's claim of ownership and right to possess trumps all others. Therefore, under the laws of the State of Washington as defined by the Washington State Supreme Court, Potts Family Motors Incorporated was entitled to service of Notice of the intent to seek forfeiture of property seized from its main place of business on August 10, 2012, and notice of the intended hearing date, at least seven days in advance. ( RCW 69.50.505(5); CR 34.05.434(1) ).

III. Potts Family Motors Incorporated became a party to this proceeding when it served written notice on the Agency's hearing Officer, that PFM had an ownership interest and lawful right to possess all property seized from its main business location on August 10, 2012, and requested return of the lawfully possessed property. RCW 69.50.505.

On August 10, 2012 the Agency seized 29 motor vehicles from the premises and lawful possession of Potts Family Motors Inc., making PFM a party for the simple reasons, that; (1) The seizure of property from PFM is prima facie evidence of PFM's [entitlement] to return of that same property. State v McWilliams, 177 Wn.App 139, 311 P.2d 584; and (2) A party from whom things are seized retains a protectable property interest in the seized items. Warden v Hayden, 387 U.S. 294, 307-308, 18 L.Ed.2d 782, 87 S.Ct. 1642. The seizure of property in the lawful possession of PFM entitled the corporation to statutory notice of any intent to seek forfeiture,

a notice which the agency has never served on PFM. RCW 69.50.505(5).

Potts Family Motors became a party to the proceedings when PFM's written notice of demand for return of property was hand delivered to the Agency's Hearing Officer on December 19, 2013, and when the hearing officer failed to hold the required hearing, a complaint was lodged on behalf of PFM in Potts's Judicial Notice of Fact, (CP #17, number 6, pgs. 10-11).

Pursuant to RCW 34.05.428(1), (2), (3) and CR 24(a), Potts was allowed to intervene and represent the corporations interest in the Appeal of Forfeiture Proceedings, and the hearing officer and Agency's acquiescence at the hearing and in Judicial Notice of Fact, to PFM's entry into the forfeiture proceeding and Forfeiture Appellate Proceeding, combined with the mandate of RCW 34.05.530 et. seq., forecloses any argument that PFM is not a party to this proceeding.

- IV. In the face of overwhelming supportive evidence, the Agency does not deny the claims made by Potts in the Supplemental Notice of Appeal, and Motion for Decision on the Merit, and Superior Court erred in denying the relief requested.

Appellant has found no case law, statute or Supreme Court precedent which supports Superior Court's Ruling; " The Court denies Potts Motion in its entirety based on the Doctrine of Waiver." (CP #160, pgs. 419-423).

No rational trier of fact could possibly conclude that Potts had waived any of the issues raised in his Supplemental Notice of

Appeal and Initial Brief, (CP #112, pgs. 177-210), or his Motion for Decision on the Merit, (CP #128, pgs. 227-235), where the issues in the Supplemental Notice of Appeal and the Motion for Decision on the Merit are identical to the issues raised in the Initial Judicial Notice of Fact, (CP #17, pgs. 9-13; July 10, 2014), and the initial Supplemental Notice of Appeal, filed on August 10, 2015, (CP #37, pgs. 18-37), and no court has ever reached on the merit of those issues.

Superior Courts Order of Dismissal of July 30, 2014, (CP #26, pgs. 14-15), did not address merit of issues raised, nor did Superior Courts Dismissal of Appeal on October 14, 2015, (CP #51, pgs. 51-53), address merit of the issues raised.

It should have been clear that Appellant has not waived any of the issues which were still pending when Superior Court made its Doctrine of Waiver Ruling concerning the Motion for Decision on the Merit, and it is just as clear that Superior Court did not make any ruling on the merit of the issues then pending.

It is obvious that Superior Courts Denial of the Motion for Decision on the Merit in its entirety under the Doctrine of Waiver Theory should be rejected, and where the Agency does not deny any of the claims made by Appellant, this Court should reverse Superior Courts Dismissal, and grant the relief requested.

- V. Superior Courts Denial of the Request to Vacate the Order of Forfeiture in relation to property seized from Potts Family Motors at 411 Oregon Way on August 10, 2012 is in direct conflict with Supreme Court Rule of Law established in *Tellevis II*.

On December 19, 2013 Potts Family Motors Incorporated arranged to have the City of Longview Police Department served with written notice of PFM's right to possess and request for return of the property seized from its main business address on August 10, 2012. ( See Supplemental Notice of Appeal, CP #177, pgs. 182-188 ).

PFM's right to object to seizure, and demand return of lawfully owned and possessed property is inherent. The lawfully owned and possessed property was seized from PFM's main business location from PFM. Establishing a prima facie claim of right to return of PFM's personal property. State v McWilliams, 177 Wn.App. 139, 311 P.2d 584.

This inherent right is supported by United States Supreme Court Precedent. " A Party from whom things are seized [retains] a protectable property interest in the seized items." Warden v Hayden, 387 U.S. 294, 307-308, 18 L.Ed.2d 782, 87 S.Ct. 1642.

The written notice invoked a statutory obligation of the Agency to hold a hearing within ninety days to adjudicate the claim, or dismiss the forfeiture proceeding in relation to PFM's property with prejudice." Espinoza v City of Everett, 87 Wn.App. 857, 943 P.2d 387 (1997); City of Walla Walla v \$401,333.44, 164 Wn.App. 236, 262 P.3d 239 (2011).

PFM was not required to provide further information, nor was the hearing officer allowed to make any arbitrary findings or conclusions in relation to the contested PFM property, prior to holding the hearing as required by statute. " Nothing in the statute requires written notice to contain anything more than contact information so

that further proceedings may be scheduled." Snohomish Regional Task Force v Real Property known as 20803 Poplar Way, Lynwood, Washington, 150 Wn.App. 387, 208 P.3d 1189 (2009).

PFM has proven that it had both lawful and constitutional right to contest the forfeiture of lawfully owned and possessed property seized from its main business address on August 10, 2012. The Agency failed to hold the required hearing within the ninety days allowed, and Superior Court abused its discretion in not dismissing the forfeiture proceeding in relation to property seized at 411 Oregon Way, with prejudice. This result is compelled by the Courts ruling in Tellevik v 31641 W. Rutherford St., 125 Wn.2d 364, 844 P.2d 1319 (1994).

Superior Court appears to presume that by failing to perform its judicial obligations this issue will simply go away. I'am sorry to say that is not the case. Where Superior Court refuses to comply with the constraints of Supreme Court Precedent and Rule of Law, the unreviewed and unresolved issue merely passes on to the next level, and Appellant must ask this Court to perform the duties that Superior Court declines to accept. As such, Appellant requests this court to find that the agency failed to perform its statutory obligation and hold a hearing for PFM within the ninety days allowed by statute, and to apply the only remedy allowed by the Tellevik Court, and dismiss the forfeiture proceeding in relation to property seized from 411 Oregon Way on August 2012, with prejudice. ( This argument is fully briefed in the Supplemental Notice of Appeal, CP #177, pgs. 182-188,

and Appellants Amended Initial Brief, pgs. 21-28 ).

- VI. Superior Court erred in denying Appellants request for Return of the unlawfully seized Red Canoe Account, where the Agency did not deny the account was illegally seized, in the trial court or its Reply Brief, and illegal seizure constrained Superior Court to Order Return of the account under law of the case. Opinion No. 48410-2-II.

The issue of illegal seizure of the Red Canoe Account was raised for the first time in the Superior Court Criminal Trial before the Honorable Judge Warning. On May 14, 2013, while adjudicating a Motion for Return of unlawfully seized property, the Honorable Judge Warning Ruled; " In the context of the criminal proceeding you are entitled to return of the property as long as it is not contraband. Having said that, that doesnt mean that there isnt some other parallel proceeding going on. And I am not going to make a ruling about that." ( See Exhibit J, attached to Initial Brief ).

The Agency's only attempt to support denying return of the Red Canoe Account is cite this Court's Opinion in Cause No. 45724-5-II, and is convoluted and presented out of context. The Agency claims that; " At pages 51-52 of this courts opinion in Potts criminal case, this Court stated it was not error for the trial court to decide that Potts' bank account funds were subject to forfeiture under RCW 69.50.505 independent of the trial courts decision to suppress records of Potts' accounts for purposes of the criminal trial." ( Agency Response, pg. 35 ).

The Agency's cite is in opposite of the Criminal Court of Appeals Ruling. What the Criminal Court of Appeals did conclude was, that; "The trial court did order return of the account pending the

forfeiture proceeding." ( See Unpublished Opinion 45724-5-II, pgs. 51-52 ).

The Criminal Court of Appeals went on to hold; " The Forfeiture Proceeding is a sepearate proceeding from the criminal proceeding, RCW 69.50.505. Additionally, the record does not contain information about the forfeiture proceeding, and Potts does not provide information to show the account was not held under RCW 69.50.505. Based on the record available to us, the trial court did not err by authorizing the return of Potts' property pending the forfeiture proceeding." ( Unpublished Opinion No. 45724-5-II, pg. 52, lines 5-9 ).

This issue has long since been settled by the Civil Court of Appeals in relation to the forfeiture proceedings argued here, in regard to: unlawful seizure, The law of the case established by the Civil Court of Appeals Ruling is, that; " While Criminal Proceedings and Civil Forfeiture Proceedings are parallel, they are sepearate; But Courts have found that a Criminal Ruling, including rulings on legality of seizure, controls in a civil forfeiture proceeding when collateral estoppel applies. Here, collateral estoppel applies." ( See Unpublished Opinion No. 48410-2-II, pg. 10 ).

Where the Court of Judge Warning Ruled that the seizure was unlawful, and the Court of Appeals ruled that law of this case is that since collateral estoppel applies here, Judge Warnings finding of unlawful seizure controls. The Court of Judge Evans should have been constrained to follow the law of the case, and order the pre-authorized return of Potts unlawfully seized Red Canoe Account.

However, Superior Court rejected this Courts Ruling and denied return of the unlawfully seized account. " We reverse the Superior Courts Order Dismissing Potts' Appeal of the Administrative Action forfeiting Potts' property, cash and bank accounts and remand for further proceedings consistent with this opinion." Unpublished Opinion No. 48410-2-II, pg. 15 ).

This issue is fully briefed and documented in the Amended Initial Brief, pgs 28-32, and this Court should find as Appellant claims, that, Superior Court has arbitrarily refused to apply the law of this case, established by the original ruling of Judge Warning, and mandated by this Courts Ruling in Unpublished Opinion No. 48410-2-II.

VII. Superior Court erred in Denying Potts claim of unlawful seizure of the Fibre Federal Accounts prior to a Judicial Review of the pending Motion for Discovery.

Superior Courts Ruling, prior to addressing Appellants timely Motion for Discovery, is premature and should be reversed. This issue is fully argued and documented in the Supplemental Notice and Initial Appeal Brief, (CP #112, pgs. 177-210 ), and Appellants Amended Initial Appeal Brief, pgs 15-19.

#### CONCLUSION

Appellant humbly asks this Court to find, that;

1. The Doctrine of Waiver may not be applied to a Motion to Vacate under CR 60(b)(5), and, where; " The law requires no.

showing other than the fact that the defendant was in fact not served with process, and the void judgement must be vacated."

Columbia Valley Credit Exchange Inc. v Bryon Lampson, 12 Wn.App. 952, 533 P.2d 152 (1975).

This Court should find that Superior Court abused its discretion in failing to address the fully briefed jurisdictional issue, Reverse Superior Courts Denial of the Motion to Vacate, and Vacate the Administrative Order of Forfeiture in its entirety, for failure of the Agency to provide sufficient notice as required to acquire statutory authority to adjudicate the forfeiture proceeding.

2. It is legally impossible to apply the Doctrine of Waiver to the Motion for Decision on the Merit, where; the same issues have been pending in Superior, and then this Court on Appeal, without review of the issues, since 2014.

This Court should reverse the Order of Dismissal of the Motion for Decision on the Merit, under the Doctrine of Waiver theory, and once again remand to Superior Court for review consistent with this Courts Opinion in No. 48410-2-II.

3. Superior Court erred in failing to consider violation of the Supreme Court Rule established in Tellevik II, and this Court should reverse Superior Courts denial of the Motion to Vacate, and Vacate the January 19, 2013 Administrative Order of Forfeiture in relation to all property seized from Potts Family Motors on August 10, 2012, including the Bank Accounts at Fibre Federal Credit Union.

4. Superior Courts non-compliance with Judge Warning's Ruling in Criminal Cause No. 12-2-00876-8 and this Courts holding in Cause No. 48410-2-II, establishing the law of the case, requires reversal of Judge Evans denial of Potts' appeal of the Agency's Administrative Order of Forfeiture in relation to the unlawfully seized Red Canoe Account. This Court should vacate the Administrative Order of Forfeiture in relation to Potts' unlawfully seized Red Canoe Account.

5. Superior Courts Order denying return of bank accounts was premature, in view of the pending Motion for Discovery for alleged warrants authorizing search and seizure of accounts. Reverse Superior Courts denial and remand for further proceedings as required after review of the warrants requested in discovery.

DATED THIS 3<sup>RD</sup> DAY OF Nov 2020  
SIGNED Sidney A. Potts  
SIDNEY A. POTTS

CERTIFICATE OF SERVICE

On this date a true and correct copy of Appellants Reply  
Brief was placed in the United States Mail addressed to;

Clerk of the Court  
Washington State Court of Appeals  
950 Broadway, Suite 300  
Tacoma, Washington  
98402-4454

Mr. John Kessler III  
Bean, Gentry, Wheeler and Peternell  
910 Lakeridge Way S.W.  
Olympia, Washington  
98502-6068

DATED THIS 3<sup>rd</sup> DAY OF Nov 2020

SIGNED

Sidney A. Potts  
SIDNEY A. POTTS

# Exhibit A



## Police Department

Memorandum

### NOTICE OF HEARING

To: Robert Ross  
900 Willow St  
Kelso, WA 98626

Case Number: 12-22097

Date of Notice: 09/13/2012

Date of 09/27/2012

Hearing:

Time of 2:30 P.M.

Hearing:

Date of Seizure: 08/10/2012

#### Property Description:

1. 1991 Chevrolet-Camero Washington License #AEA5432

You and each of you are hereby notified of a hearing to be held at the Longview Police Department, 1351 Hudson St. Longview, Washington. The nature of that proceeding will be to afford you the opportunity to be heard as to your claim or right, and the extent thereof, to certain property described above, which was seized by law enforcement officers of the above agency, because that property was used or gained in connection with an offense involving controlled substances in violation of RCW 69.50.505. Said hearing will be held before a person designated in writing as Hearing Officer by Alex Perez, Chief of Police. Legal authority and jurisdiction under which said hearing is to be held is contained in RCW 69.50.505. The procedures to be followed in said hearing are contained in RCW 34.05.

It is at this hearing that you bring any witnesses and/or evidence to support your claim. **YOUR FAILURE TO APPEAR AND ASSERT YOUR CLAIM OR RIGHT, AND THE EXTENT THEREOF, WILL RESULT IN THE FORFEITURE OF THE SEIZED PROPERTY.** You may be represented by an attorney at this hearing. **This is not a criminal proceeding, and an attorney will not be appointed for you.** **IF YOU WANT AN ATTORNEY TO REPRESENT YOU IN THIS HEARING, YOU MUST OBTAIN ONE YOURSELF.**

Please contact the Longview Police Department at (360) 442-5800, or at P.O. Box 128, Longview, Washington 98632, prior to the scheduled hearing date to confirm your attendance at this hearing.



## Police Department

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### IN RE THE FORFEITURE OF: 1991 Chevrolet Camaro, WA license AEA5432

This matter having come on for hearing on September 27, 2012, before Edward R. Jones, Hearing Officer designated by the Chief of Police for the City of Longview, Jim Duscha, the claimant, Robert Ross, being present, with Officer Ryan Blonien presenting the case for the City of Longview and the Hearing Officer having heard the testimony of Detective Kevin Sawyer and Sergeant Ray Hartley of the Longview Police Department, and the Hearing Officer having considered and admitted into the record certain exhibits on behalf of the Longview Police Department, and having heard and considered the testimony in this matter;

Now therefore, the undersigned Hearing Officer makes the following findings of fact:

I  
That on 8/10/2012, pursuant to a wide ranging investigation into narcotics trafficking, money laundering, and other related crimes, detectives with the Longview Police Street Crimes Unit served a search warrant at the business known as Potts Family Motors located at 411 Oregon Way, Longview.

That as a result of the search warrant detectives seized 28 motor vehicles, U.S. currency, illicit drugs, and documentary evidence leading to the arrest of the business owner, Sid Potts, for numerous felony crimes, including drug crimes.

That documents seized by detectives included vehicle titles signed off by their previous owners, releasing their ownership interest and found in conjunction with consignment contracts, most of which were not filled out.

That detectives did discover one example of a legitimate consignment contract in which the legal owners did not sign off their ownership interest and in which the consignment contract was completed and dictated the terms of the contract.

That one of the 28 vehicles detectives seized was a 1991 Chevrolet Camaro with Washington license AEA5432, previously registered to the legal owner, Robert Ross, the Claimant.

That detectives seized a Washington Vehicle Certificate of Title on which Ross signed away his ownership interest in the vehicle.

That subsequent to his arrest and the seizure of the vehicle Sid Potts claimed ownership and requested a seizure hearing on the same vehicle claimed by Ross.

That under direct testimony as well as cross examination by Officer Blonien Ross admitted he signed away his ownership interest in the vehicle and subsequently withdrew his claim to the vehicle in deference to Potts' claim.

**II**

That incident to the lawful arrest of Sid Potts the aforementioned property was seized on 8/10/2012 pursuant to RCW 69.50.505 on behalf of the Longview Police Department.

**III**

That at the time of the seizure of the aforementioned property Detective Sawyer and Sergeant Hartley were acting in their official capacity as commissioned law enforcement officers for the City of Longview.

**IV**

That the "Notice of Seizure and Intended Forfeiture" document was served on Robert Ross by the Longview Police Department.

**V**

That the "Notice of Seizure and Intended Forfeiture" document contains a clear explanation of the procedure necessary to claim ownership, or right of possession, of the aforementioned property.

**VI**

That Robert Ross provided written claim of ownership or right of possession of the aforementioned seized property within the prescribed time period in accordance with RCW 69.50.505. That the written claim of ownership or right of possession document contained a request that a hearing be scheduled in reference to the "Notice of Seizure and Intended Forfeiture" document listing the aforementioned property. That a hearing was scheduled to take place on 9/27/2012 at 2:30 p.m. at the Longview Police Department. That Robert Ross was advised of the date, time, and location of such hearing in writing.

**VII**

That the following physical exhibits were offered and accepted into the record as well as verbal testimony from Detective Sawyer, Sgt. Hartley:

1. Copy of Notice of Seizure and Intended Forfeiture
2. Copy of Certified Mail Receipt
3. Copy of Notice of Hearing

**CONCLUSIONS OF LAW**

**I**

The Hearing Officer, Edward R. Jones, has sole jurisdiction over the subject matter and parties.

II

The Longview Police Department has proven by the preponderance of evidence sufficient to believe the vehicle seized was being used to facilitate the sale or delivery of illegal controlled substances and are therefore subject to forfeiture under RCW 69.50.505 (a) (4).

III

That the Longview Police Department has proven by the preponderance of the evidence sufficient to believe that Ross signed away his ownership interest in the 1991 Chevrolet Camaro to Sid Potts.

IV

That Ross has not established the defendant property was not subject to forfeiture or that any statutory exception to forfeiture applies.

ORDER OF FORFEITURE

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered that the defendant property, a 1991 Chevrolet Camaro, Washington license AEA5432, is to remain in the custody of the Longview Police Department pending a Seizure Hearing for claimant Sid Potts and that claimant Ross has no ownership interest in the vehicle and no legal standing to challenge the seizure or potential forfeiture.

Edward R. Jones  
Edward R. Jones,  
Hearing Officer

Subscribed and sworn to before me  
This 2nd day of Oct, 2012.

Mary L. Lake  
Notary Public in and for the  
State of Washington, residing  
in Longview  
My commission expires 5/6/16.

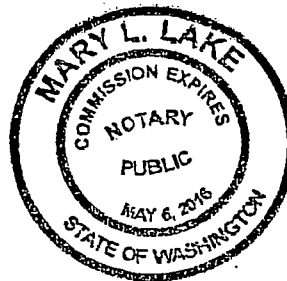


Exhibit B



**Police Department**  
Memorandum

**NOTICE OF HEARING**

To: Brandi Fjell  
403 SW Canyon Loop  
Winlock, WA 98596

Case Number: 12-22097

Date of Notice: 09/13/2012

Date of 09/27/2012

Hearing:

Time of 3:00 P.M.

Hearing:

Date of Seizure: 08/10/2012

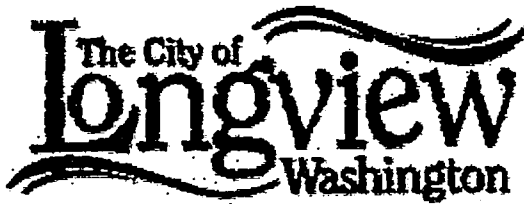
**Property Description:**

1. 1986 Volkswagen Rabbit WA LIC/402XOC

You and each of you are hereby notified of a hearing to be held at the Longview Police Department, 1351 Hudson St. Longview, Washington. The nature of that proceeding will be to afford you the opportunity to be heard as to your claim or right, and the extent thereof, to certain property described above, which was seized by law enforcement officers of the above agency, because that property was used or gained in connection with an offense involving controlled substances in violation of RCW 69.50.505. Said hearing will be held before a person designated in writing as Hearing Officer by Alex Perez, Chief of Police. Legal authority and jurisdiction under which said hearing is to be held is contained in RCW 69.50.505. The procedures to be followed in said hearing are contained in RCW 34.05.

It is at this hearing that you bring any witnesses and/or evidence to support your claim. **YOUR FAILURE TO APPEAR AND ASSERT YOUR CLAIM OR RIGHT, AND THE EXTENT THEREOF, WILL RESULT IN THE FORFEITURE OF THE SEIZED PROPERTY.** You may be represented by an attorney at this hearing. **This is not a criminal proceeding, and an attorney will not be appointed for you.** **IF YOU WANT AN ATTORNEY TO REPRESENT YOU IN THIS HEARING, YOU MUST OBTAIN ONE YOURSELF.**

Please contact the Longview Police Department at (360) 442-5800, or at P.O. Box 128, Longview, Washington 98632, prior to the scheduled hearing date to confirm your attendance at this hearing.



## Police Department

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### IN RE THE FORFEITURE OF: 1986 Volkswagen Rabbit, WA license 402XOC

This matter having come on for hearing on September 27, 2012, before Edward R. Jones, Hearing Officer designated by the Chief of Police for the City of Longview, Jim Duscha, the claimant, Brandi Fjell, being present, with Officer Ryan Blonien presenting the case for the City of Longview and the Hearing Officer having heard the testimony of Detective Kevin Sawyer and Sergeant Ray Hartley of the Longview Police Department, and the Hearing Officer having considered and admitted into the record certain exhibits on behalf of the Longview Police Department, and having heard and considered the testimony in this matter;

Now therefore, the undersigned Hearing Officer makes the following findings of fact:

That on 8/10/2012, pursuant to a wide ranging investigation into narcotics trafficking, money laundering, and other related crimes, detectives with the Longview Police Street Crimes Unit served a search warrant at the business known as Potts Family Motors located at 411 Oregon Way, Longview.

That as a result of the search warrant detectives seized 28 motor vehicles, U. S. currency, illicit drugs, and documentary evidence leading to the arrest of the business owner, Sid Potts, for numerous felony crimes, including drug crimes.

That documents seized by detectives included vehicle titles signed off by their previous owners, releasing their ownership interest and found in conjunction with consignment contracts, most of which were not filled out.

That detectives did discover one example of a legitimate consignment contract in which the legal owners did not sign off their ownership interest and in which the consignment contract was completed and dictated the terms of the contract.

That one of the 28 vehicles detectives seized was a 1986 Volkswagen Rabbit with Washington license 402XOC, previously registered to the legal owner, Brandi Fjell, the Claimant.

That detectives seized a Washington Vehicle Certificate of Title on which Fjell signed away her ownership interest in the vehicle.

That subsequent to his arrest and the seizure of the vehicle Sid Potts claimed ownership and requested a seizure hearing on the same vehicle claimed by Fjell.

That under direct testimony as well as cross examination by the City Fjell admitted she signed away her ownership interest in the vehicle, although she claimed

she was unaware of the consequences of doing so, believing it to be standard practice for a consignment sale.

**II**

That incident to the lawful arrest of Sid Potts the aforementioned property was seized on 8/10/2012 pursuant to RCW 69.50.505 on behalf of the Longview Police Department.

**III**

That at the time of the seizure of the aforementioned property Detective Sawyer and Sergeant Hartley were acting in their official capacity as commissioned law enforcement officers for the City of Longview.

**IV**

That the "Notice of Seizure and Intended Forfeiture" document was served on Brandi Fjell by the Longview Police Department.

**V**

That the "Notice of Seizure and Intended Forfeiture" document contains a clear explanation of the procedure necessary to claim ownership, or right of possession, of the aforementioned property.

**VI**

That Brandi Fjell provided written claim of ownership or right of possession of the aforementioned seized property within the prescribed time period in accordance with RCW 69.50.505. That the written claim of ownership or right of possession document contained a request that a hearing be scheduled in reference to the "Notice of Seizure and Intended Forfeiture" document listing the aforementioned property. That a hearing was scheduled to take place on 9/27/2012 at 3:00 p.m. at the Longview Police Department. That Brandi-Fjell was advised of the date, time, and location of such hearing in writing.

**VII**

That the following physical exhibits were offered and accepted into the record as well as verbal testimony from Detective Sawyer, Sgt. Hartley, and Brandi Fjell:

1. Copy of Notice of Seizure and Intended Forfeiture
2. Copy of the Notice of Hearing
3. Copy of Vehicle Certificate of Title
4. Copy of Vehicle Title and consignment contract for comparison
5. Copy of Vehicle Bill of Sale
6. Copy of Insurance bill
7. DOL vehicle registration printout
8. DOL vehicle registration printout provided by Fjell

## CONCLUSIONS OF LAW

I

The Hearing Officer, Edward R. Jones, has sole jurisdiction over the subject matter and parties.

II

The Longview Police Department has proven by the preponderance of evidence sufficient to believe the vehicle seized was being used to facilitate the sale or delivery of illegal controlled substances and are therefore subject to forfeiture under RCW 69.50.505 (a) (4).

III

That the Longview Police Department has proven by the preponderance of the evidence sufficient to believe that Fjell signed away her ownership interest in the 1986 Volkswagen Rabbit to Sid Potts.

IV

That Fjell has not established the defendant property was not subject to forfeiture or that any statutory exception to forfeiture applies.

## ORDER OF FORFEITURE

Pursuant to the above findings of fact and conclusions of law, it is hereby ordered that the defendant property, a 1986 Volkswagen Rabbit, Washington license 402XOC, is to remain in the custody of the Longview Police Department pending a Seizure Hearing for claimant Sid Potts and that claimant Fjell has no ownership interest in the vehicle and no legal standing to challenge the seizure or potential forfeiture.

Edward R. Jones  
Edward R. Jones,  
Hearing Officer

Subscribed and sworn to before me  
This 2nd day of Oct, 2012.

Mary L. Lake  
Notary Public in and for the  
State of Washington, residing  
in Longview  
My commission expires 5/6/16.

